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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN C. MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A04-0611-CV-644
	)	
HEATHER R. JONES,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE WAYNE SUPERIOR COURT  
The Honorable David C. Stewart, Magistrate  
Cause No. 89D03-0609-SC-1771

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**May 10, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

John C. Miller appeals a small claims judgment in favor of Heather R. Jones. We affirm.

## **Issue**

We restate the issue as whether Miller has established prima facie error.

## **Facts and Procedural History**

The facts most favorable to the trial court's judgment indicate that on May 1, 2005, Miller took possession of Jones's mobile home. At that time, Miller told Jones "that within six months he was going to go get him a loan and buy this property on contract or pay [her] for it and [she] would pay Bobby Knipp for it." Tr. at 17.<sup>1</sup> In the interim, Miller verbally agreed to pay Jones \$200 on the first of each month and to pay property taxes, lot rent, and insurance. Each time Miller paid Jones his monthly obligation, he asked her to fill out a receipt indicating that he was purchasing the mobile home on contract "because it look[ed] better to [his] bank on trying to buy or get a loan for it." *Id.* Miller did not obtain a loan to purchase the mobile home, and Jones did not "get around" to producing a written contract for them to sign. *Id.* at 18. Eventually, Miller began making late payments, and Jones learned that he had fallen behind on the lot rent, for which she was ultimately responsible. Jones also failed to pay the property taxes due in the spring of 2006.

On September 18, 2006, Jones filed a complaint possession for nonpayment of rent. On October 2, 2006, the trial court held a possession hearing at which Miller failed to appear.

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<sup>1</sup> Jones testified that she possesses the title to the mobile home, and Miller testified that he had reason to believe that Jones was purchasing the mobile home on contract from Knipp.

The court heard evidence, entered a judgment stating that Jones was entitled to possession, and set a damages hearing for October 18, 2006. On October 3, 2006, Miller filed an emergency motion to set aside default judgment. On October 9, 2006, the trial court held a hearing on Miller's motion. As of that date, Miller had not paid his monthly obligation for October. The court heard evidence, entered an amended judgment stating that Jones was entitled to possession, and set a damages hearing for November 10, 2006. This appeal ensued.

### **Discussion and Decision**

Miller challenges the trial court's judgment awarding possession of the mobile home to Jones. Our standard of review is well settled:

Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). When reviewing claims tried by the bench without a jury, we shall not set aside the judgment "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses. Rather, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom.

A judgment in favor of a party having the burden of proof will be affirmed if the evidence was such that from it a reasonable trier of fact could conclude that the elements of the party's claim were established by a preponderance of the evidence. This deferential standard of review is particularly important in small claims actions where trials are "informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law." [Ind. Small Claims Rule] 8(A).

*Wehry v. Daniels*, 784 N.E.2d 532, 534 (Ind. Ct. App. 2003) (some citations omitted).

We note that Jones has failed to file an appellee's brief. "In such a case, we need not undertake the burden of developing arguments for [Jones]. Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. 'Prima facie' is defined as 'at first sight,' 'on first appearance,' or 'on the face of it.'" *Franklin College v. Turner*, 844 N.E.2d 99, 101 (Ind. Ct. App. 2006) (citations omitted).

Miller's argument appears to be based on the premise that Jones failed to prove that he breached "any agreed upon term" of their oral contract, and therefore the trial court should have allowed him to retain possession of the mobile home. Appellant's Br. at 6. Miller's premise is incorrect. At the hearing, Miller admitted that he and Jones had agreed that he would pay the property taxes and further admitted that he failed to pay the taxes due in the spring of 2006. Tr. at 14. In other words, Miller admitted to breaching the contract.<sup>2</sup> Miller does not argue that this breach is immaterial, and he makes no further cognizable claims of error supported by citations to authority as required by Indiana Appellate Rule 46(A)(8)(a). As such, we must conclude that he has failed to establish prima facie error and hereby affirm the trial court's judgment.

Affirmed.

SULLIVAN, J., and SHARPNACK, J., concur.

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<sup>2</sup> Additionally, Jones testified that Miller had been behind on his lot rent and that she had "yet to this day to see proof of insurance on the property which was verbally agreed." Tr. at 17.